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# State Enterprise Act

(1185/2002)

By decision of Parliament, the following is enacted:

## Chapter 1

### General provisions

#### Section 1

##### *Scope of application and objectives*

This Act applies to an unincorporated State Enterprise that carries out business activity (State Enterprise) and which is specifically governed by it under an Act (enterprise-specific act).

This Act contains provisions on the basic principles of the operations, finances and management of a State Enterprise.

#### Section 2

##### *Operating principles of a State Enterprise*

The scope and tasks of a State Enterprise shall be governed by an enterprise-specific act. A State Enterprise shall carry out business operations within its scope and perform also the other tasks provided for it in the enterprise-specific act.

A State Enterprise shall operate in compliance with business principles as well as with the service targets and other operating targets approved thereto by Parliament.

#### Section 3

##### *A State Enterprise group*

A State Enterprise may exercise the dominant influence referred to in chapter 1(5) and (6) of the Accounting Act (1336/1997) over one or several domestic or foreign undertakings directly linked to its own business operations. The undertakings over which a State Enterprise exercises dominant influence are subsidiaries of the State Enterprise. The State Enterprise and its subsidiaries form a State Enterprise group.

If the value of the shares of a subsidiary is considerable or if the corporate relationship of the State Enterprise and a subsidiary is otherwise deemed significant, the acquisition or conveyance of the shares of the subsidiary requires Government authorisation. Government authorisation is also required with regard to a corresponding acquisition or conveyance of a significant holding or membership in an undertaking other than a subsidiary. Conveyance of real estate assets shall, however, be governed by the Act on the Right to Convey State Property Assets (973/2002).

A State Enterprise may not grant group contributions to its subsidiaries.

## Chapter 2

### Finances of a State Enterprise

#### Section 4

##### *Equity capital*

A State Enterprise has equity capital consisting of basic capital, other equity capital and a re-valuation fund.

The basic capital is the capital invested in the State Enterprise and forming the basis for the distribution of profits.

Other equity capital is the capital designated to the State Enterprise of its profits or capital assigned to it as other equity. The re-valuation fund shall indicate the amount of the revaluation of fixed assets performed. Other equity capital and the re-valuation fund may be transferred to the basic capital.

#### Section 5

##### *Loans raised and guarantees granted by a State Enterprise*

A State Enterprise may raise a loan to finance its operations within the limits of the authorisation issued by Parliament in connection with the handling of the State budget.

When authorised by Parliament, a State Enterprise may grant a guarantee for the loan of a subsidiary in the form of a limited company belonging to the same State-Enterprise group. A State Enterprise may not, however, grant a guarantee for a loan of a limited company belonging to the State-Enterprise group which alone or together with another subsidiary exercises control over another undertaking.

A guarantee fee in accordance with the Act on State Lending as well as State Guarantees and Security (449/1988) shall be collected for the loans raised and guarantees granted by a State Enterprise.

Further provisions on the raising of the loan referred to in subsection 1, the terms of borrowing and the purpose of the loan as well as on the determination and collection of the fee referred to in subsection 3 are given by Government decree.

#### Section 6

##### *Responsibility of the State*

To the extent that a State Enterprise cannot fulfil its commitments, the State shall be responsible for them.

#### Section 7

##### *Financing of economically unviable tasks*

The State budget may contain an appropriation to finance an economically unviable task imposed upon a State Enterprise.

## Chapter 3

### Steering of a State Enterprise

#### Section 8

##### *Steering competence of Parliament, the Government and the Ministry*

In connection with the handling of the State budget, Parliament:

- (1) approves the central service targets and other operating targets of the State Enterprise;
- (2) approves the raising or lowering of the basic capital of the State Enterprise as well as decides on the inclusion of an appropriation in the State budget to be granted for the raising of the basic capital of the State Enterprise;
- (3) authorises the State Enterprise to raise a loan to finance its activities;
- (4) approves the maximum amount of investments of the State Enterprise for the fiscal year as well as an authorisation to make commitments relating to investments causing expenses in the following fiscal years;
- 5) authorises the State Enterprise to grant a guarantee in accordance with section 5(2) for a loan of a subsidiary in the form of a limited company belonging to the State Enterprise group.

After Parliament has confirmed the State budget, the Ministry decides on the service targets and other operating targets of the State Enterprise as well as on the performance target and profit-crediting target of the State Enterprise. The performance target shall be set so that the State Enterprise can achieve the service targets and other operating targets referred to in subsection 1(1) that are economically profitable.

The Ministry decides on the use of the appropriation referred to in section 7 and on its payment.

Where necessary, the Government gives orders and instructions on the operation and finances of the State Enterprise.

## Chapter 4

### Management and personnel of a State Enterprise

#### Section 9

##### *Board of Directors*

A State Enterprise shall have a Board of Directors comprising eight members at most.

The Government appoints the members of the Board of Directors for a maximum period of three years at a time and appoints the Chairman of the Board of Directors from among the members. At least one member of the Board of Directors shall represent the personnel of the State Enterprise. The member representing the personnel shall be employed by the State Enterprise unless specifically otherwise provided for in the enterprise-specific act. Further provisions on the composition of the

Board of Directors shall, where necessary, be issued by an enterprise-specific act or by a decree.

The Government relieves the Board of Directors or its member from their duties.

## Section 10

### *Duties of the Board of Directors*

The Board of Directors shall steer and supervise the operations of the State Enterprise. The Board of Directors shall be responsible for the management and the proper arrangement of the operations of the State Enterprise as well as especially for compliance with the decisions and regulations of Parliament and other authorities as well as for the proper supervision of the accounting and the financial matters of the State Enterprise.

The Board of Directors shall especially:

- (1) submit a proposal for the budget proposal of the State Enterprise as well as the related proposal for the service targets and other operating targets of the State Enterprise for the following year as well as for the performance target and the profit-crediting target;
- (2) decide on the development of the operations of the State Enterprise within the operating and financial targets set by Parliament and the Ministry as well as monitor and report on the achievement of the targets;
- (3) appoint and discharge the Managing Director;
- (4) decide on the borrowing of the State Enterprise;
- (5) decide on significant investments and other long-term expenses of the State Enterprise;
- (6) decide on the exercise of the rights belonging to the shareholder with regard to shares held by the State Enterprise in the management of a subsidiary belonging to the State Enterprise group as well as on the granting of a guarantee for a loan of a subsidiary within the limits determined in accordance with section 5(2);
- (7) prepare the final accounts and the annual report of the State Enterprise and the State Enterprise group and, in relation thereto, submit a proposal for the measures called for by the profit or loss of the State Enterprise as well as submit the final accounts, the annual report and the proposal to the Government for confirmation;
- (8) decide on the persons authorised to sign for the State Enterprise;
- (9) decide on the profit bonus system referred to in the Act on Personnel Funds (814/1989) of the State Enterprise and its application within the limits of the decisions made by Parliament and the Ministry under section 8;
- (10) decide on the acquisition of property assets of the State Enterprise as well as on the conveyance of State property assets and on the rental of State landed property as provided for in the Act on the Right to Convey State Property Assets;

(11) handle and decide other issues of extensive or major significance.

Further provisions on the duties of the Board of Directors shall, where necessary, be issued by an enterprise-specific act or by a decree.

## Section 11

### *Managing Director*

A State Enterprise shall have a Managing Director, who shall manage and develop the operations of the State Enterprise, attend to the day-to-day management of the State Enterprise as well as ensure that the accounting complies with the law and that the financial management is arranged in a reliable manner. The provisions on a Managing Director of the Finnish Companies Act (734/1978) apply, as appropriate, to the Managing Director.

The Managing Director shall attend to the implementation of the decisions of the Board of Directors and comply with the orders of the Board of Directors as well as inform the Board of Directors of measures and events significant to the operations of the State Enterprise.

## Section 12

### *Participation of personnel*

The rights and duties of the member representing the personnel in the Board of Directors are the same as those of the other members of the Board of Directors. The member representing the personnel shall not, however, have the right to participate in the handling of matters relating to the appointment or discharge of the management of the State Enterprise, the contract terms of the management, the terms of employment of the personnel or to industrial action.

Instead of the Act on Co-operation within Government Agencies and Public Services (651/1988), a State Enterprise may, as decided by the State Enterprise, be governed by the Act on Co-operation within Undertakings (725/1978). The provisions of sections 11c - 11e, section 13(1), section 14(1), section 15 and section 16(1) of the latter Act apply, as appropriate, to group co-operation in a State Enterprise group.

A State Enterprise governed by the Act on Co-operation within Undertakings may conclude an agreement referred to in section 14 of the said Act.

## Chapter 5

### **Accounting and final accounts of a State Enterprise**

## Section 13

### *Accounting and final accounts*

A State Enterprise and a State Enterprise group are under a legal obligation to keep books. Unless otherwise provided for in this Act, the accounting and final accounts of a State Enterprise and a State-Enterprise group shall be governed by the provisions of the Accounting Act and the Finnish Companies Act on the accounting and final accounts of a limited company. The other operations referred to in section 2(1) and

governed by an enterprise-specific act shall be subject to separate accounting, and separate final accounts shall be drawn up thereof. Further provisions on the separate accounting and separate final accounts are given by Government Decree.

The financial year of a State Enterprise and a State-Enterprise group is a calendar year. By the end of March, the State Enterprise shall draw up final accounts and the State Enterprise group consolidated final accounts for each financial year. The Board of Directors and the Managing Director of the State Enterprise sign the final accounts of the State Enterprise and the State-Enterprise group. The State Enterprise and the State-Enterprise group shall submit the annual account documents to the Ministry.

The Government shall confirm the final accounts of the State Enterprise and the consolidated final accounts of the State Enterprise group. The Government shall, on the basis of the final accounts, decide on the crediting of the profit of the State Enterprise to the State budget as well as on other measures called for by the operations and finances of the State Enterprise.

Further provisions on accounting, the final accounts, the annual report, the confirmation of the final accounts, and on the submission of information for the compilation of the Financial Statement and Report are given by Government decree.

#### Section 14

##### *Balance sheet of a State Enterprise*

Upon the start of the operations of a State Enterprise, the Government decides, under an authorisation of Parliament issued in connection with the handling of the State budget, on the State property to be transferred to be administered by the State Enterprise as well as on the part of the property to be entered as basic capital, other equity capital or as borrowed capital. The property is evaluated at the current price.

The provisions of subsection 1 shall be complied with upon deciding on a transfer to the on-budget entities and in the drafting of the balance sheet, when property is transferred to be administered by a State Enterprise in operation or when property administered by a State Enterprise is transferred.

The Government decides on the transfer when the State's individual targets of property assets or entities of property assets, the current value of which is no more than ten million euro, are transferred to be administered by a State Enterprise or from a State Enterprise to the on-budget entities. The transfer shall be entered as an increase or a decrease in other equity or as borrowed capital.

Prior to the Government decision referred to in subsections 1 - 3, the auditors of the State Enterprise shall estimate the property and the liabilities and their value as well as issue a statement thereon.

#### Section 15

##### *Audit*

The Ministry shall annually appoint two auditors to audit the management, finances and accounts of the State Enterprise. One of the auditors shall be a CPFA Auditor or a CPFA Audit Organisation referred to in the Act on Chartered Public Finance Auditors (467/1999) and the other shall be a KHT Auditor or a KHT Audit Organisation referred to in the Audit Act (936/1994).

The auditors of the State Enterprise shall audit the management, accounting and final accounts of a given financial year of the State Enterprise and the State Enterprise group. If the State Enterprise has a subsidiary belonging to the State Enterprise group, the State Enterprise shall ensure that, where possible, at least one of the auditors of the State Enterprise is appointed an auditor of the subsidiary. An auditor of the State Enterprise shall have the right to have the subsidiary audited to the extent that he deems it necessary as well as to obtain any accounts and assistance he has requested from the Board of Directors and the Managing Director of the subsidiary.

The audit report shall especially state:

- (1) whether the management of the State Enterprise has been attended to in compliance with the law and decrees as well as with the Decisions of Parliament, the Government and the Ministries as well as with other steering decisions;
- (2) whether the final accounts and the consolidated final accounts of the State Enterprise have been drawn up in accordance with the provisions and regulations on the drawing up of final accounts as well as whether the final accounts, the consolidated final accounts and the annual report give correct and sufficient information on the operations, finances, economic development and financial responsibilities of the financial year;
- (3) whether the internal supervision and inspection of the State Enterprise have been properly arranged.

The provisions on responsible auditors of the Act on Chartered Public Finance Auditors apply to the auditors liable for the State Enterprise, their disqualification and confidentiality obligation.

State auditors shall supervise and the National Audit Office shall audit the operations of State Enterprises and State Enterprise groups.

## **Chapter 6**

### **Miscellaneous provisions**

#### Section 16

##### *Liability in damages*

A member of the Board of Directors and the Managing Director of a State Enterprise shall be liable to compensate damage caused in office to the State Enterprise either wilfully or negligently, as provided for in chapter 15 of the Finnish Companies Act. The provisions of section 44 of the Audit Act and section 24 of the Act on Chartered Public Finance Auditors apply to the liability in damages of an auditor.

The decision regarding the bringing of an action for the compensation of damage referred to in subsection 1 on behalf of the State Enterprise shall be made by the Ministry. Unless the action is based on a punishable act, an action against the Board of Directors or the Managing Director or an auditor of the State Enterprise cannot be brought in the name of the State Enterprise later than within three years from the end of the financial year during which the decision was made or the neglect took place or the measure was taken that forms the basis for the action.

## Section 17

### *Competency as a party*

A State Enterprise may sue and be sued on behalf of the State as well as represent the interests and rights of the State in a court of law, before the authorities and in proceedings in matters relating to the State Enterprise.

## Section 18

### *Pensions and other benefits as well as compensations*

The pensions of the personnel of a State Enterprise and the other benefits and compensations to be paid centralised to the personnel under the employment terms as well as the survivors' pensions paid to the relatives of the personnel under the employment terms shall be paid from public funds as separately provided for on these benefits and compensations.

The entitlement of the Managing Director to a pension and the other benefits and compensations referred to in subsection 1 shall be determined in the same manner as the corresponding benefits and compensations of the personnel of the State Enterprise.

The benefits and compensations referred to in subsections 1 and 2 as well as the costs for their attendance to be determined in accordance with the Act on the Charge Criteria of the State (150/1992) shall be collected from the State Enterprise unless otherwise provided for elsewhere on the collection of benefits, compensations or costs or the pricing of services arising from attendance to benefits and compensations.

## **Chapter 7**

### **Transitional provisions and entry into force**

## Section 19

### *Entry into force*

This Act enters into force on 1 February 2003.

This Act repeals the State Enterprise Act of 10 July 1987 (627/1987), as amended, hereinafter referred to as 'the previous Act', as well as the Act on the General Grounds on the Management and Use of State Industrial Plants of 13 May 1931 (168/1931).

## Section 20

### *Transitional provisions*

The State Enterprises formed under the previous Act shall be governed by the previous Act until 31 December 2003. Their final accounts and audit for the financial year ending on 31 December 2003 shall be governed by the provisions or orders issued in the previous Act or thereunder.

Notwithstanding the provisions of subsection 1, the provisions of the previous Act shall apply to the National Board of Aviation until 31 December 2004.

Notwithstanding the provisions of section 11, the provisions on the administrative position as well as on the employment relationship of the Managing Director and its

permanence of the previous Act apply to a Managing Director appointed prior to the entry into force of this Act, unless the Managing Director and the Board of Directors of the State Enterprise agree in writing that the Managing Director be governed by this Act.

The provisions of section 15(1) on the qualifications and number of auditors shall not apply to auditors appointed prior to the entry into force of this Act.

The fee referred to in section 5(3) above shall be collected for loans raised as well as guarantees granted during the period of validity of this Act.